



250 South Clinton Street, Suite 600
Syracuse, New York 13202

Telephone 315-474-2911
Facsimile 315-474-6015

Karen G. Felter
Partner
kfelter@smithsovik.com

August 27, 2018

*With Offices in
Syracuse | Buffalo | Long Island*

VIA ECF

Hon. Frederick J. Scullin
United States District Judge
Federal Building and U.S. Courthouse
100 South Clinton Street
P. O. Box 7255
Syracuse, NY 13261-7345

Re: *Doe v. Syracuse University, et al*
Civil Action No.: 5:18-CV-00496 [FJS-DEP]

Dear Judge Scullin:

I am writing to request an extension of time to file papers in opposition to defendants' motion to dismiss for failure to state a claim (Dkt. #44). Plaintiffs' date to respond to defendants' motion is currently tomorrow, August 28, 2018. (Dkt. # 44). Plaintiffs were attempting to **voluntarily dismiss** the above-referenced action via a stipulation with counsel for defendants to refile it in Jefferson County as directed by Judge McClusky in a related Article 78 proceeding filed by *some* of the John Doe plaintiffs on August 10, 2018. Judge McClusky has scheduled a return date of September 19, 2018, to determine whether a hearing is necessary to resolve the merits of petitioners' claims that the disciplinary action by Syracuse University was arbitrary and capricious and should be reversed. Notably, these claims were not included in the pending federal action for two reasons - federal district courts generally lack jurisdiction to hear Article 78 claims without an independent basis for federal question jurisdiction, and three of the John Doe petitioners in the Article 78 case are New York State residents and cannot be parties to the federal action. Because Mr. Powers, counsel for defendant Syracuse University, argued in support of a motion to dismiss the Article 78 petition, that it was unfair and improper to subject Syracuse University to two different actions based on the same facts in both federal and state court, Judge McClusky directed that the two actions be consolidated or joined. While we were awaiting a response from counsel for defendants regarding whether he would stipulate to discontinuance and re-filing of the federal action and pending motion to dismiss in state court, (See **Exhibit "A"**), defendants filed an answer to the Second Amended Complaint, Dkt, # 46. This is an obvious effort to **prevent** plaintiffs from voluntarily discontinuing the case per Fed. R. Civ. P. 41.

While the parties attempt to work out an agreement with Mr. Powers and consult with Judge McClusky regarding his directive that the two actions be consolidated or joined, plaintiffs request that the Court exercise its discretion to extend the filing date for plaintiff's opposition to defendants' motion to dismiss by four weeks to September 24, 2018, a date **after** the scheduled return date in Jefferson

Smith Sovik Kendrick & Sugnet P.C.

August 27, 2018
Page 2

County.

Thank you for your assistance with this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Karen G. Felter", written in a cursive style.

Karen G. Felter

cc: All Counsel of Record via ECF